

IN THE SUPREME OF TENNESSEE
AT NASHVILLE

FILED

June 15, 1999

Cecil W. Crowson
Appellate Court Clerk

NICK ALLEN PARKER	}	WARREN
	}	No. Below 6398
Plaintiff/Appellee	}	
	}	Hon. J. Richard McGregor
vs.	}	
	}	
	}	No. 01S01-9803-CH-00054
TRAVELER'S INDEMNITY COMPANY	}	
and THE AETNA CASUALTY AND	}	
SURETY COMPANY	}	
Defendant/Appellants	}	AFFIRMED

JUDGMENT ORDER

This case is before the Court upon the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Memorandum Opinion setting forth its findings of fact and conclusions of law, which are incorporated herein by reference.

Whereupon, it appears to the Court that the Memorandum Opinion of the Panel should be accepted and approved; and

It is, therefore, ordered that the Panel's findings of fact and conclusions of law are adopted and affirmed, and the decision of the Panel is made the judgment of the Court.

Costs will be paid by defendants/appellants, for which execution may issue if necessary.

IT IS SO ORDERED on June 15, 1999.

PER CURIAM

IN THE SUPREME COURT OF TENNESSEE

SPECIAL WORKERS' COMPENSATION APPEALS PANEL

AT NASHVILLE
(March 31, 1999 Session)

FILED
WARREN CHANCERY
June 15, 1999
Hon. J. Richard McGregor,
Cecil W. Crowson
Appellate Court Clerk

NICK ALLEN PARKER,)
)
Plaintiff-Appellee,)
)
v.)
)
TRAVELER'S INDEMNITY)
COMPANY and THE AETNA)
CASUALTY AND SURETY)
COMPANY,)
)
Defendants-Appellants.)

WARREN CHANCERY
June 15, 1999
Hon. J. Richard McGregor,
Cecil W. Crowson
Appellate Court Clerk
No. 01S01-9803-CH-00054

For Appellants:

Robert J. Uhorchuk
Spicer, Flynn & Rudstrom
Chattanooga, Tennessee

For Appellee:

Robert L. Huskey
Manchester, Tennessee

MEMORANDUM OPINION

Members of Panel:

Frank F. Drowota, III, Associate Justice
Thomas W. Brothers, Special Judge
Joe C. Loser, Jr., Special Judge

AFFIRMED

Loser,

Judge

MEMORANDUM OPINION

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel in accordance with Tenn. Code Ann. § 50-6-225(e)(3) for hearing and reporting of findings of fact and conclusions of law. The employer's insurer insists the trial court's award of permanent partial disability benefits is excessive and that the chancellor erred in awarding such benefits based on six times the medical impairment rating without making specific findings of fact as required by Tenn. Code Ann. § 50-6-241(c). As discussed below, the panel has concluded the award should be affirmed.

The extent of an employee's permanent vocational disability is a question of fact. Collins v. Howmet Corp., 970 S.W.2d 941 (Tenn. 1998). Review is therefore *de novo* upon the record of the trial court, accompanied by a presumption of correctness of the findings of fact, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2).

The employee or claimant, Parker, is thirty-two years old with less than a high school education and experience at jobs requiring manual labor. At the time of his injury, he was employed as a carpet layer for The Carpet Barn.

In June of 1996, the claimant injured his back at work and was referred to a neurosurgeon, who performed unsuccessful disc surgery. The operating surgeon estimated his permanent medical impairment at ten percent to the whole body after the claimant reached maximum medical improvement in December of the same year. The claimant has not returned to work for the pre-injury employer and has been severely restricted in what he can do because of his physical limitations since the injury and surgery.

At the request of the defendants, the claimant was evaluated by another doctor, who noted the unsuccessful surgery, but expressed no opinion as to the extent of impairment. Yet another doctor, to whom the claimant was referred by his own lawyer for an examination and evaluation, assigned a permanent impairment rating of sixteen percent to the whole body. A vocational expert estimated the claimant's vocational disability at ninety-one percent. The trial court awarded permanent partial disability benefits based on sixty percent to the body as a whole.

For injuries occurring on or after August 1, 1992, where an injured worker is entitled to receive permanent partial disability benefits to the body as a whole, and the pre-injury employer does not return the employee to employment at a wage equal to or greater than the wage the employee was receiving at the time of the injury, the maximum permanent partial disability award that the employee may receive is six times the medical impairment rating determined pursuant to the above guidelines. Tenn. Code Ann. § 50-6-241(b). If a court awards a multiplier of five or greater, then the court must make specific findings of fact detailing the reasons for its award, considering all relevant factors, including lay and expert testimony, the employee's age,

education, skills and training, local job opportunities and capacity to work at types of employment available in claimant's disabled condition. Tenn. Code Ann. § 50-6-241(c).

At the conclusion of the trial, the chancellor reviewed portions of the evidence without making the required specific findings detailing the reasons for the award. It appears from the record, in fact, the award may have been based in part on the chancellor's personal experiences, rather than findings based on the evidence. While it is true, as the defendants contend, that the award exceeds the medical impairment of the operating surgeon, it is equally true that the award is less than four times the impairment rating of another qualified expert, whose testimony is in the record. Thus, specific findings are not required. Additionally, from a consideration of the relevant factors, we cannot say the evidence preponderates against the award.

For the above reasons, the judgment of the trial court is affirmed and the cause remanded to the trial court for such additional proceedings, if any, as may be necessary. Costs on appeal are taxed to the defendants.

Joe C. Loser, Jr., Special Judge

CONCUR:

Frank F. Drowota, III, Associate Justice

Thomas W. Brothers, Special Judge